

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Revision of the Commission's Rules to Ensure)
 Compatibility with Enhanced 911 Emergency)
 Calling Systems)

CC Docket No. 94-102
 RM-8143

To: The Commission

COMMENTS ON PETITIONS FOR RECONSIDERATION

KSI Inc. ("KSI"), by its counsel and pursuant to Section 1.429 of the FCC's Rules hereby submits its Comments on the Petitions For Reconsideration of the Commission's *Memorandum Opinion and Order on Reconsideration*, FCC 97-402 (December 23, 1997) in the above-captioned proceeding.¹

In its Report and Order and Further Notice of Rulemaking in this proceeding, the FCC recognized the critical need for the integration of wireless location capabilities in the networks of covered CMRS carriers:

By our action today we are taking several important steps to foster major improvements in the quality and reliability of 911 services available to the customers of wireless telecommunications service providers. Our decisions in this Report and Order reflect our longstanding and continuing commitment to manage use of the electromagnetic spectrum in a manner that promotes the safety and welfare of all Americans.²

¹*Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (Memorandum Opinion and Order on Reconsideration)*, FCC 97-402 (December 23, 1997), 63 Fed. Reg. 2631 (January 16, 1998) ("MO&O").

²*Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (Report and Order and Further Notice of Proposed Rulemaking)*, 11

In its MO&O, the FCC affirmed its commitment to these goals while refining its Rules governing the implementation of wireless E911 services in certain respects:

The limited revisions to our rules we adopt today are intended to remedy technical problems raised in the record while otherwise reaffirming our commitment to the rapid implementation of the technologies needed to bring emergency assistance to wireless callers throughout the United States.³

Two parties, the Cellular Telecommunications Industry Association ("CTIA") and BellSouth Corporation ("BellSouth") have requested further reconsideration and/or clarification of the FCC's wireless E911 requirements in certain respects. CTIA suggests, for example, that the FCC should take measures to promote the universal availability of wireless E911 services by facilitating the use of federal property for wireless facility siting.⁴ To this end, CTIA requests that the FCC stay its wireless E911 rules until it has addressed these issues.⁵ Both CTIA and BellSouth suggest that the FCC should permit covered carriers to file informational E911 tariffs, model contracts and/or reports to provide notice of liability limitations to parties that may not take service from the carrier.⁶ BellSouth, in addition, requests that the FCC stay the applicability of its wireless E911 requirements within a state until such time as that state adopts

FCC Rcd 18676, at para. 1 (1996) ("*R&O*").

³*MO&O* at para. 6.

⁴Petition For Reconsideration and Clarification of the Cellular Telecommunications Industry Association, CC Docket 94-102 (February 17, 1998) ("*CTIA Petition*") at 9.

⁵*CTIA Petition* at 9.

⁶*CTIA Petition* at 10-16; Petition For Reconsideration of BellSouth Corporation, CC Docket 92-102 (February 17, 1998) ("*BellSouth Petition*") at 3-6.

legislation limiting the liability of the carriers providing E911 services.⁷ CTIA further requests that the FCC clarify certain provisions of its E911 requirements, including the use of handset-based solutions to address the Phase II E911 requirements.

In response to the needs of the public safety community, KSI has developed its patented angle-of-arrival TeleSentinel™ wireless location system and has demonstrated its system in operation providing locations with a level of accuracy that exceeds the Phase II requirements at numerous trade conferences, including the recent CTIA Wireless '98 Conference in Atlanta, Georgia. KSI is continuing its development efforts and anticipates that it will demonstrate a TDMA version of its TeleSentinel™ system in the coming months. KSI has been an active participant in this Docket since its inception, and its contributions have been cited numerous times by the Commission in both the *R&O* and the *MO&O*.

KSI understands and is sympathetic to CTIA's request that the FCC consider actions to promote the availability of federal lands for tower sites and to the desire of CTIA and BellSouth to submit tariffs or other filings to the Commission to provide non-subscribers with notice of liability limitations. However, KSI opposes any requests for stay or deferral of the effectiveness of the wireless E911 rules on these bases. As the Commission has recognized, the integration of wireless E911 capabilities in the covered carriers' networks will greatly facilitate the provision of emergency services and will help save lives. Moreover, Chairman Kennard, in his Statement accompanying the *MO&O*, recognized that the integration of these capabilities into

⁷BellSouth Petition at 6-7.

wireless communications networks would align more closely and expeditiously the capabilities of those networks with the public's needs and perceptions:

In most places, emergency service teams have the ability to locate a 911 wireline caller and the ability to return that person's call. The Commission today reaffirms the deadlines for the rules for enhanced 911 services that will move us closer to making this a reality for wireless callers as well.... The rules we affirm respecting wireless E-911 move us closer to the day when wireless telephony will be viewed by consumers as a complete substitute for wireline telephony.

The Commission carefully reviewed and balanced the time frames necessary to integrate these capabilities and provide for cost recovery mechanisms when it established its E911 requirements and the Phase I and II deadlines in the *R&O* and again when it affirmed those requirements and deadlines with slight modifications in the *MO&O*. Any delay or deferral of those requirements will needlessly impair the ability of public safety agencies to render emergency assistance to 911 callers and likely will cost lives.

As a legal matter, neither CTIA nor BellSouth have even attempted to make a showing required to support a stay of the Commission's Rules. Under well established precedent, a party seeking a stay must establish (1) that they will suffer irreparable injury should a stay not be granted, (2) that no party will be unduly prejudiced by a stay, (3) that there is a likelihood of prevailing on the merits of their requests and (4) that the public interest otherwise supports grant of a stay. See *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921, 925 (D.C. Cir. 1958); *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). Here, the public interest found by the Commission in adopting and affirming the E911 requirements simply precludes the grant of a stay or deferral of the rules under the *R&O*.

In addition, a stay of the rules on a state-by-state basis pending action by the state legislature regarding carrier liability would be unwise as it would cause an undue delay in the implementation of E911 services. KSI supports the carriers' efforts to obtain protective legislation on a state-by-state basis, and agrees that liability issues and concerns of this nature typically have fallen within the province of the state legislatures. However, a stay of the E911 requirements in a particular state pending such protective legislation by that state would raise many problematic legal issues regarding effective federal preemption and the FCC's jurisdiction to take such action.

As a policy matter, any stay or deferral of the E911 requirements would not serve, and in fact would be harmful to, the public interest. The FCC's actions in this Docket have spurred significant investment in the research and development of location technologies capable of meeting the Phase I and Phase II requirements. As a result of these efforts, the widespread deployment of these technologies is realizable by the Phase II deadline. A stay or deferral of the E911 requirements at this time would result in marketplace upheaval and paralysis at a critical time and will hamper the development and deployment of location capabilities in the wireless networks. Accordingly, KSI urges that the FCC dismiss without consideration CTIA's and BellSouth's requests for stay or deferral or effectiveness of the E911 requirements.

In its Petition, CTIA further requests that the FCC clarify "how it intends to measure handset-based solutions to Phase II requirements."⁸ In this respect, CTIA notes that one commenter previously suggested applying the Phase II requirements only to new handsets and

⁸CTIA Petition at 23.

notes that "[o]ther potential solutions" include incorporating factors to address non-ALI capable handsets in the calculations used to determine [compliance]." KSI, however, believes that no Commission clarification on this point is either desirable or necessary and, indeed, that the specific suggestions raised by CTIA are flatly in conflict with the rules adopted in this proceeding and the public policy goals of the public safety community and the FCC.

To this end, KSI submits that the Rules adopted by the FCC in the *R&O* and affirmed by the *MO&O* are in fact technology neutral. The Commission carefully balanced the record in this proceeding and crafted rules that did not mandate the use of any particular technological approach to meet the E911 requirements. The FCC nowhere has stated its desire for a particular standard and has expressly left the choice of technologies and the development of standards to industry. KSI supports the FCC's decision in these respects.

Accordingly, under the FCC's Rules any technological approach, whether network-based or handset-based, that meets the level of accuracy required may be implemented by the covered carriers. Thus, handset-based solutions are accommodated by the Commission's Rules. To this end, it is therefore possible that a carrier could swap out or retrofit handsets by October 1, 2001 with its subscribers and therefore meet the Phase II requirements with a handset-based solution.

KSI in fact has consistently stated in this Docket its view that a network-based solution will better serve the needs of both the carriers and the public safety community by placing the location information in the network rather than in the handset. Network-based solutions, moreover, do not require the addition of costly components to, or the costly replacement of, the handset, add weight to handsets that consumers in fact purchase for their

portability, or diminish the battery life of these units, which is, of course, of critical importance in emergency situations. Conversely, handset-based location solutions limit portability and battery-life and add costs at the end user level which are likely to substantially exceed the per-handset cost of a network-based location solution. In addition, a handset-based location solution if mandated would severely limit user handset options as available battery life would be required for location rather than other service features. To KSI's knowledge, one of the parties developing an integrated wireless/GPS handset has publicly stated at an industry trade show that it is not feasible to deploy GPS chips in smaller wireless handsets, including the Motorola Star-Tac, because of the added weight and battery requirements. For these and related reasons, KSI selected a network-based solution as its preferred technological approach to provide cost-effective universal services.

KSI cautions that major changes to the Commission's Rules through a "clarification" to attempt to somehow neutralize the practical and commercial advantages of network-based solutions over handset solutions will not serve the public interest and will not maintain technical neutrality. Regulatory changes of the nature suggested to promote handset-based location solutions under the guise of "technical neutrality" will in fact accomplish only a reduction in the products and services available to the public, directly contrary to public safety interests. It must be recognized that here as in any commercial marketplace the technology that most effectively and efficiently meets the needs of the end user will ultimately be preferred in the marketplace. Given the critical public safety needs recognized many times in this Docket by the Commission, the major changes to the Rules suggested to promote the use of handset-based solutions would come at a severe and unbearable cost. KSI, in short, believes that the FCC's

Rules establish a level playing field but that the Commission must be careful not to also level the technologies playing on that field.

The untimely suggestion made previously in this Docket by Zoltar Satellite Alarm Systems⁹ that the FCC simply exempt the over 50 million existing cellular handsets from its E911 requirements would entirely defeat the public safety goals of this proceeding. Many subscribers of wireless services would be unable to benefit from location capabilities for many years. Most importantly, many callers seeking emergency assistance by calling 911 could not be located simply because they were using a handset that had been grandfathered out of the FCC's E911 requirements. This would simply be an unacceptable and unnecessary outcome of this regulatory process.

To the best of KSI's knowledge, while certain parties, including Zoltar, claim to be integrating GPS chips into wireless handsets, to date there is no such handset commercially available. To be viably useful for saving lives, the location information provided to the public safety agent must be both accurate and timely. Handset solutions to such practical requirements have not even been routinely addressed. Thus, even if the market would otherwise choose a handset-based solution despite the encumbrances on portability and battery life and the additional end user costs, unless the carriers selecting that option engage in a robust program of handset swaps or retrofits it will be many years before the existing 50 million plus handsets are changed out to location-capable handsets, if ever. In the interim, the public safety community will

⁹Ex Parte Comments of Zoltar Satellite Alarm Systems, CC Docket 94-102.

continue to be plagued by the escalating problems already vividly documented in this proceeding over the past four years at a cost that can be measured in terms of lost lives.

Nor should the Commission allow the mathematical loophole suggested by CTIA in measuring system compliance. The FCC was very clear in the *MO&O* that it expected covered carriers to attempt a location on every 911 call, and that the statistical accuracy of such locations must comply with the Phase II requirements. The FCC thus stated that "[t]o comply with [the Phase II] requirement, covered carriers must attempt to determine mobile unit location in each case in which a 911 call transits their system."¹⁰ A clarification of this requirement is simply not necessary. A revision of this requirement, in addition, would frustrate the public safety goals of this proceeding and would ill serve the public interest.

For these reasons, KSI respectfully urges the Commission to take such further action in this proceeding consistent with the views expressed in these Comments.

Respectfully submitted,

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¹⁰*MO&O* at para. 111

CERTIFICATE OF SERVICE

I, Douglas L. Povich, hereby certify that copies of the foregoing Comments on Petitions for Reconsideration in CC Docket No. 94-102, RM-8143 were served this 18th day of March, 1998, via U.S. mail, first-class, postage paid, on the following:

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A handwritten signature in dark ink, appearing to read 'D L Povich', written over a horizontal line.

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